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DANA WEISS AND ALL THOSE
SIMILARLY SITUATED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

DANA WEISS, an individual, and all
others similarly situated,

Plaintiff,

vs.

TRADER JOE'S COMPANY, a
California Corporation; and DOES 1
through 10,

Defendants.

Case No. 8:18-cv-01130-JLS-GJS

**FIRST AMENDED COMPLAINT –
CLASS ACTION**

[DEMAND FOR JURY TRIAL]

INTRODUCTION

1. Plaintiff Dana Weiss (“Plaintiff”) brings this action individually and on behalf of a proposed class and subclass (“Class” or “Classes”), as more fully defined below, of similarly situated persons nationwide or in California, seeking to redress the pervasive pattern of fraudulent, deceptive, and false and otherwise improper advertising, sales and marketing practices that the Defendants (as later defined) have engaged in with regard to their “alkaline” water (“Product” or “Trader Joe’s Alkaline Water”). As more fully stated herein, Defendants’ schemes or artifices to deceive and mislead Plaintiff and other members of the proposed Classes including Plaintiff and other members of the proposed Classes, into purchasing, at a premium price, tens of millions of dollars’ worth of water, which are distributed, marketed, advertised, and or sold by Defendants.

2. On November 20, 2018, the Court entered its Order Granting Defendant’s Motion to Dismiss (“Order”) Plaintiff’s Original Class Action Complaint. (Dkt. No. 23). The Court concluded that this First Amended Complaint (“FAC”) may not be based on “any alleged misrepresentation that the Court concluded was nonactionable as a matter of law.” Order, p. 17. Because Plaintiff interprets the spirit of the Order as permitting a limited basis to amend, Plaintiff makes an offering of additional allegations at ¶¶23-64 solely to preserve the record, and to avoid any legal argument that the perceived basis of leave to amend had been misconstrued. Allegations ¶¶23-64 are relevant to disposition of this case only to the extent the Court has already considered them, and rejected them in not permitting Plaintiff even one opportunity to amend.¹

¹ Since the Court concluded in the Order that Plaintiff could not amend her pleading by briefs in Opposition to Motion to Dismiss, it is unclear if all plausible allegations were considered in denying leave to amend or certain contentions were rejected for procedural reasons. Order, p. 7. Plaintiff reserves the right to seek leave to amend.

1 3. Plaintiff also offers amended allegations concerning those amendments
2 concerning representation of pH of 9.5+ at ¶¶65-75.

3 4. Defendants have repeatedly violated the consumer protection statutes
4 referred to herein by making deceptive promotional claims about their alkaline water
5 products, claims that are false and misleading by competent, reliable scientific
6 evidence. Defendants have claimed that their water is “ionized to achieve the perfect
7 balance,” “refresh and hydrate” with hundreds of plus symbols superimposed on the
8 packaging, a universal sign of gaining health, when in reality the Product is no
9 different than drinking any bottled water or tap water. The make-up of Trader Joe’s
10 Alkaline Water does not provide any of the benefits Defendants say it does.

11 5. Defendants prey on consumers by misleadingly claiming that the Product
12 is of alkalinity greater than 9.5+ and is ionized to achieve the perfect balance.

13 6. There is no plausible metabolic explanation that the water is “perfectly
14 balanced.” In fact, whether balance refers to one’s body or the water, this water is not
15 “balanced.” The more likely explanation, that this refers to the body, is simply untrue
16 as a matter of science. The water is also not perfectly balanced because the ions are
17 increased to 7.5, to 8.5, to 9.5 to 10.5 with the use of electrolysis and thus, this
18 Product is not “alkaline water” that promotes any plausible sense of balance.

19 7. In the alternative, there is no genuine scientific research and there are no
20 scientifically reliable studies in existence that support the extraordinary claims of
21 Defendants, or that alkaline branded water provide a superior benefit to a consumer.
22 Defendants for their part, do not contend that the Product is “clinically tested” so this
23 is not a substantiation averment in the alternative. Aside from this false health claim,
24 there is no reliable scientific evidence that the water gives a consumer scientific
25 “balance.” Even if there are any reports, they are subject to reasonable critique, such
26 that the reports are not reliable, and there is at minimum a reasonable and material
27 dispute of fact. Defendants know or should have known, that there is no greater

benefit to ingesting Trader Joe's Alkaline Water alkaline water than ingesting an equivalent bottled water or tap water, and that its advertising and marketing practices would lead the reasonable consumer to believe that Trader Joe's Alkaline Water is a superior product to other waters. Moreover, Trader Joe's Alkaline Water has taken no meaningful steps to clear up consumer misconceptions regarding its alkaline branded water Product.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332(d)(2) and 28 U.S.C. § 1711, et. seq., the Class Action Fairness Act of 2005 because (i) there are 100 or more Class Members, (ii) upon information and belief there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and one defendant are citizens of different states.

9. For the subclass, the Court has original jurisdiction over CAFA and/or supplemental jurisdiction under 28 U.S.C. § 1367.

10. Venue is proper in this district under 28 U.S.C. § 1391 because Defendants continuously conduct business in this district and a substantial part of the events giving rise to these claims occurred in the Central District of California; Defendants and/or their agents are doing business in California; and/or Defendants are otherwise subject to personal jurisdiction in this judicial district.

PARTIES

11. Plaintiff Dana Weiss is, and at all times mentioned herein, was a resident of the State of California. Beginning on or about November of 2016, Plaintiff has purchased the Alkaline Water. In initially deciding to purchase the Trader Joe Alkaline water, Plaintiff relied on Trader Joe's claims that the Product was of a pH of greater than 9.5, and that it was ionized to help her achieve perfect "balance." Plaintiff thereafter purchased the Trader Joe Alkaline Water ("Product"). Plaintiff typically

1 purchased the Trader Joe's Alkaline Water at the Trader Joe's in Manhattan Beach,
2 Store No. 106. Ms. Weiss will be unable to rely on the Product's advertising or
3 labeling in the future based on its level of deception. Even though Ms. Weiss would
4 like to purchase the Product, she cannot purchase the Product in the future based on
5 the current labeling.

6 12. When purchasing the Product, Ms. Weiss was seeking a product that
7 would balance pH internally, and she relied on this contention. Ms. Weiss also
8 thought that the Product was greater than a pH of 9.5+

9 13. The labeling of the Product, however, was misleading, and had the
10 capacity, tendency, and likelihood to confuse or confound Ms. Weiss and other
11 consumers acting reasonably (including the putative class), as described in detail
12 herein.

13 14. Ms. Weiss acted reasonably in relying on Trader Joe's Claims, which
14 Trader Joe's intentionally placed on the Product labels with the intent to induce
15 ordinary consumers into purchasing the Product.

16 15. The Product cost more than similar products without misleading labeling,
17 even the water shelved right next to the alkaline water at Trader Joe's, and would have
18 cost less absent the false and/or misleading claims.

19 16. If Trader Joe's was enjoined from making the claims, the market demand
20 and price for its Product would drop, as it has been artificially and fraudulently
21 inflated due to Trader Joe's use of deceptive labeling.

22 17. Ms. Weiss paid more for the Product, and would only have been willing
23 to pay less, or unwilling to purchase them at all, absent the misleading claims
24 complained of herein.

25 18. For these reasons, the Product was worth less than what Ms. Weiss paid
26 for it, and may have been worth nothing at all.
27

1 19. Defendant Trader Joe's Company ("Trader Joe's") is a privately-held
2 corporation organized and existing under the laws of the State of California with its
3 principal place of business at 800 S. Shamrock Avenue, Monrovia, CA 91016. Trader
4 Joe's manufactured, marketed, distributed, and advertised and sold Trader Joe's
5 Alkaline water at all times relevant hereto. Trader Joe's sells hundreds of thousands
6 of bottles water per week in the United States. Its annual sales for the sale of the
7 product are in the millions.

8 20. Plaintiff is ignorant of the true identities and capacities of fictitiously
9 named defendants designated as Does 1-10, but will amend this complaint or any
10 subsequent pleading when their identities and capacities have been ascertained
11 according to proof. On information and belief, each and every Doe defendant is in
12 some manner responsible for the acts and conduct of the other defendants herein, and
13 each Doe was, and is, responsible for the injuries, damages, and harm incurred by
14 Plaintiff. Each reference in this complaint to "defendant," "defendants," or a
15 specifically named defendant, refers also to all of the named defendants and those
16 unknown parties sued under fictitious names.

17 21. Plaintiff is informed and believes and thereon alleges that, at all times
18 relevant hereto, all of the defendants together were members of a single
19 unincorporated association, with each member exercising control over the operations
20 of the association. Plaintiff is informed and believes and thereon alleges that, at all
21 times relevant hereto, each of the defendants was the agent, associate, employee
22 and/or representative of each of the remaining defendants, and in doing the things
23 hereinafter alleged, was acting within the authorized course and scope of this agency,
24 association and employment with the full knowledge and consent of the remaining
25 defendants. Plaintiff is further informed and believes and thereon alleges that each and
26 all of the acts herein alleged as to each defendant was authorized and directed by the
27 remaining defendants, who ratified, adopted, condoned and approved said acts with

1 full knowledge of the consequences thereof, and memorialized the authority of the
2 agent in a writing subscribed by the principal.

3 22. Plaintiff is informed and believes and thereon alleges that each of the
4 defendants herein agreed among each other to commit the unlawful acts (or acts by
5 unlawful means) described in this complaint. The desired effect of the conspiracy was
6 to defraud and otherwise deprive Plaintiff of her constitutionally protected rights to
7 property, and of her rights under other laws as set forth herein. Each of the defendants
8 herein committed an act in furtherance of the agreement. Injury was caused to the
9 Plaintiff by the defendants as a consequence.

10 ADDITIONAL FACTS

11 23. Attached as **Exhibit 1** is a true and correct copy of ABC News article
12 titled, “Alkaline Water Claims to Offer Greater Hydration, Health Benefits.”
13 [https://abcnews.go.com/Health/alkaline-water-claims-offer-greater-hydration-health-](https://abcnews.go.com/Health/alkaline-water-claims-offer-greater-hydration-health-benefits/story?id=33268980)
14 [benefits/story?id=33268980](https://abcnews.go.com/Health/alkaline-water-claims-offer-greater-hydration-health-benefits/story?id=33268980).

15 24. Attached as **Exhibit 2** is a true and correct copy of the New York Times
16 article titled, “Is Alkaline Water Really Better for You?”
17 <https://www.nytimes.com/2018/04/27/well/eat/alkaline-water-health-benefits.html>.

18 25. Attached as **Exhibit 3** is a true and correct copy of study titled,
19 “Systemic Review of the Association Between Dietary Acid Load, Alkaline Water
20 and Cancer.” <https://bmjopen.bmj.com/content/6/6/e010438>.

21 26. Attached as **Exhibit 4** is a true and correct copy of a study titled,
22 “Influence of Alkaline Ionized Water on Rat Erythrocyte Hexokinase Activity and
23 Myocardium.”
24 https://ci.nii.ac.jp/els/contentscinii_20181013060333.pdf?id=ART0001944400.

25 27. Attached as **Exhibit 5** is a true and correct copy of a study titled,
26 “Systemic and local effects of long-term exposure to alkaline drinking water in rats.”
27 <https://www.ncbi.nlm.nih.gov/pubmed/11493345>.

1 28. Attached as **Exhibit 6** is a true and correct copy of article titled,
2 “Alkaline Water—Find or Fraud?” [https://cspinet.org/tip/alkaline-](https://cspinet.org/tip/alkaline-water%E2%80%94find-or-fraud)
3 [water%E2%80%94find-or-fraud](https://cspinet.org/tip/alkaline-water%E2%80%94find-or-fraud).

4 29. Attached as **Exhibit 7** is a true and correct copy of article titled, “Does
5 Alkaline Water Really Hydrate You Better.” [https://www.wellandgood.com/good-](https://www.wellandgood.com/good-advice/is-alkaline-water-more-hydrating-regular-water/)
6 [advice/is-alkaline-water-more-hydrating-regular-water/](https://www.wellandgood.com/good-advice/is-alkaline-water-more-hydrating-regular-water/).

7 30. Attached as **Exhibit 8** is a true and correct copy of an image of Trader
8 Joe’s Alkaline Water labeling.

9 31. Attached as **Exhibit 9** is a true and correct copy of the Notice of
10 Violation of the California Consumer Legal Remedies Act and Duty to Preserve
11 Evidence that was sent to Defendant Trader Joe’s via certified mail on November 11,
12 2017.

13 32. Attached as **Exhibit 10** is a true and correct copy of article titled, “I
14 Drank Fancy Water for a Week so you Don’t Have to.”
15 [https://www.elle.com/beauty/health-fitness/a32285/alkaline-water-health-benefits-](https://www.elle.com/beauty/health-fitness/a32285/alkaline-water-health-benefits-claims/)
16 [claims/](https://www.elle.com/beauty/health-fitness/a32285/alkaline-water-health-benefits-claims/).

17 33. Attached as **Exhibit 11** is a true and correct copy of article titled, “Huge
18 Number of People Believe Drinking Alkalinized Water Prevents Diseases: Are They
19 Right?” [https://www.alternet.org/print/personal-health/huge-number-people-believe-](https://www.alternet.org/print/personal-health/huge-number-people-believe-drinking-alkalinized-water-prevents-diseases-are-they)
20 [drinking-alkalinized-water-prevents-diseases-are-they](https://www.alternet.org/print/personal-health/huge-number-people-believe-drinking-alkalinized-water-prevents-diseases-are-they).

21 34. Attached as **Exhibit 12** is a true and correct copy of images reflecting the
22 price of Trader Joe’s Alkaline Water compared to that of Trader Joe’s Spring
23 Mountain Water.

24 35. Attached as **Exhibit 13** is the venue form for the filing of this Class
25 Action.

26 36. With the high number of studies, articles, and publications by accredited
27 doctors and scientists warning consumers of the affirmatively false statement by

1 alkaline water proprietors such as Trader Joe's, a reasonable consumer could be
2 deceived by Trader Joe's Alkaline Water.

3 37. Defendant advertises that its alkaline water is "ionized to achieve the
4 perfect balance."

5 38. Water with a pH of 9.5 or greater is by definition, not balanced.

6 39. A pH of 9.5 or greater cannot be considered by the consumer to represent
7 a perfect balance. As reflected on the Product's label and the scale on the back of the
8 Product's packaging, balanced pH is in the neutral range for "bottled water."

9 40. Water with a pH that ranges from 10.5 to 11.5 to 12.5 to 13.5, is not
10 "perfectly balanced."

11 41. "Ionized" is referred to in the past tense suggesting that the water has
12 already been chemically altered. Thus, to "achieve" the perfect balance refers to the
13 consumer's internal pH balance.

14 42. "Achieve" is a transitive verb which matches with a consumer's
15 expectations here, defined commonly, as "to get or attain as the result of exertion."

16 43. All reasonable inferences suggest that the "perfect balance" promised to
17 be achieved, is the resulting pH balance a person benefits from by consuming the
18 Product. This is at minimum, a dispute of fact.

19 44. That Defendant has claimed that this is a substantiation claim
20 independently defeats its argument that "ionized to achieve the perfect balance" can
21 possibly refer to the chemical make-up of the water; if the statement is characterized
22 as a substantiation claim, the Defendant is equitably estopped from claiming the
23 Product is not referring to the health benefits that may accrue to a person.

24 45. *Plaintiff's claims are not substantiation claims*: Plaintiff has not alleged
25 that the product is clinically tested, nor that any representation falsely implies that the
26 marketing claims were "clinically proven" by scientific proof, the only matter at issue
27 in *Kwan v. Sanmedica, Int'l*, 854 F.3d 1088 (9th Cir. 2017).

1 46. Defendant does not represent its product is clinically proven as either a
2 performance based claim, nor a health based claim, so this is not a substantiation
3 claim. Instead, Plaintiff offers in her Complaint and CLRA letter, a plausible
4 metabolic explanation that “ionized to achieve the perfect balance” is affirmatively
5 false because water high in alkalinity cannot improve one’s internal pH balance, and
6 certainly cannot achieve the perfect balance. Plaintiff contends in the alternative, that
7 several studies have concluded that a pH balance has no beneficial impact on the
8 alkalinity balance in the blood constituting at minimum, a material dispute of fact.
9 Plaintiff is entitled to plead in the alternative.

10 47. “Ionized to achieve the perfect balance” is affirmatively false because
11 once alkaline water enters one’s stomach, the body simply pours in greater amounts of
12 acid to neutralize the water, such that no “balance” can possibly be created, and no
13 “perfect balance” can possibly be created.

14 48. “Ionized to achieve the perfect balance,” in paragraph 46, is affirmatively
15 a false statement, independent and irrespective of whether there is no scientific
16 support.

17 49. Coupled with the false “balance” claim, “hydrate and refresh” contribute
18 to the deceptive context of this packaging.

19 50. Hydration is critical for health, but according to the World-renowned
20 Cleveland Clinic specializing in cardiology, alkaline waters, which implies among
21 others, Trader Joe’s Product, do not have any added health benefits.
22 <https://health.clevelandclinic.org/alkaline-water-dont-believe-the-marketing-hype/>.

23 51. That the Product “hydrates and refreshes” is affirmatively false because
24 ingestion and consumption of the Product leads to negative consequences to ones
25 health, including growth retardation. *See Exhibit 5*. A 1998 study also found that
26 alkaline water can lead to heart muscle damage in laboratory rats (Journal of
27

1 Toxicological Sciences). Upon information and belief, these conclusion plausibly
2 apply to human ingestion.

3 52. Alkaline water, generally, and this Product, can agitate the body's
4 normal pH leading to metabolic alkalosis, a condition producing the following
5 symptoms: nausea, vomiting, hand tremors, muscle twitching, tingling in the
6 extremities or face, confusion.

7 53. Alkaline water, generally, and this Product, also interfere with digestion
8 of proteins.

9 54. Trader Joe's also makes an affirmatively false representation that the
10 Product is "Alkaline Water" when in fact, electrolysis alone (the method Trader Joe's
11 employs to create a higher pH) that results in higher pH, does not make water more
12 alkaline. [https://www.uswatersystems.com/blog/2017/08/scientists-say-dont-be-](https://www.uswatersystems.com/blog/2017/08/scientists-say-dont-be-duped-by-alkaline-water/)
13 [duped-by-alkaline-water/](https://www.uswatersystems.com/blog/2017/08/scientists-say-dont-be-duped-by-alkaline-water/) ("The only thing that neutralizes acid is alkalinity, not the
14 water being alkaline. *So let me rephrase that: Alkaline water does not mean that it*
15 *has substantial alkalinity.* There must be alkaline minerals in the water — to begin
16 with — in order to produce alkalinity in your water.""). Mark Timmons authored this
17 article who is Certified by The Water Quality Association as a CWS-VI, CI, CSR and
18 has held these certifications since 1980. The "Fearless Flyer" confirms the Product is
19 run through electric currents (electrolysis).

20 55. Trader Joe's scale on the back of the Product is also affirmatively false
21 for the same reason in that Trader Joe's represents the "higher the pH, the greater the
22 alkalinity" when in fact as opined by several experts in the field, higher pH does not
23 mean substantial alkalinity.

24 56. The contention that the Product can be "ionized to achieve a perfect
25 balance" is also affirmatively false because:

26 (a) "ionized water" is nothing more than sales fiction; the term is
27 meaningless to chemists;

(b) Pure water (that is, water containing no dissolved ions) is too uncondutive to undergo significant electrolysis by “water ionizer” devices;

(c) Pure water can never be alkaline or acidic, nor can it be made so by electrolysis. Alkaline water must contain metallic ions of some kind – most commonly sodium, calcium, or magnesium;

(d) The idea that one must consume alkaline water to neutralize the effects of acidic foods is ridiculous; we get rid of excess acid by exhaling carbon dioxide;

(e) If you do drink alkaline water, is alkalinity is quickly removed by the highly acidic gastric fluid in the stomach [plausible metabolic explanation];

(f) Uptake of water occurs mainly in the intestine, not in the stomach. But when stomach contents enter the intestine, they are neutralized and made alkaline by the pancreatic secretions – so all the water you drink eventually becomes alkaline anyway.”

<http://www.chem1.com/CQ/ionbunk.html>.

57. The scale on the back of the Product is affirmatively false because many sources for tap water are composed of a pH greater than 7, and even at pH of 9, naturally, whereas the consumer is led to believe through the scale, the Product provides benefits, in reality, it does not.

58. All of the specific on-label claims contribute to the deceptive context of the representation, to “achieve a perfect balance.” The notion that this “alkaline water” hydrates and refreshes, and provides medical properties is a performance based claim that contributes to the balance claim.

59. A California plaintiff can bring claims on a nationwide basis. *Gitson v. Trader Joe’s*, 63 F. Supp.3d 1114 (N.D. Cal. 2014).

1 60. Ms. Weiss relied on all of the representations in the Fearless Flyer (off-
2 label) and all those representations made by Defendants on the label in deciding to
3 purchase the Product as referenced in the factual section of this Complaint.

4 61. Members of the public are likely to be deceived based on a significant,
5 diverse, and widespread consensus of licensed doctors, chemists, and PhD scientists
6 asserting alkaline water like Trader Joe's Product, is effectively snake oil.

7 62. Plaintiff (and class members) would not have acted as they did in buying
8 the Product if they had known of the concealed or suppressed facts above; they would
9 have bought ordinary bottled water.

10 63. Many consumers have consumed alkaline water based on the belief it
11 will help balance their diets from eating foods high in acid, like the Fearless Flyer and
12 the on label advertisements suggest. [https://abc11.com/health/alkaline-water-has-no-](https://abc11.com/health/alkaline-water-has-no-proven-benefits-expert-says/1458290/)
13 [proven-benefits-expert-says/1458290/](https://abc11.com/health/alkaline-water-has-no-proven-benefits-expert-says/1458290/).

14 64. For all these reasons, and those demonstrated through the course of this
15 case, reliance is reasonable and plausible.

16 65. Plaintiff observed and tested that the Product had a pH level of less than
17 9.5 one week after she purchased the Product in November of 2016.

18 66. The testing was performed at the Plaintiff's residence. The Plaintiff also
19 tested tap water. The test results were Trader Joe's Alkaline Water at 7.3 pH, and tap
20 water 7.1 pH.

21 67. The Plaintiff tested the Product using an appropriate device for
22 ascertaining the pH of liquid substances, a PH-02 "pen type pH meter" made by
23 manufacturer, Zacro. Plaintiff tested more than once.

24 68. Most of the reviewers who tested Trader Joe's Product found it to be at a
25 pH of 6, which is acidic. [http://www.lifeionizers.com/blog/trader-joes-alkaline-water-](http://www.lifeionizers.com/blog/trader-joes-alkaline-water-fails-test-at-9-5-ph/)
26 [fails-test-at-9-5-ph/](http://www.lifeionizers.com/blog/trader-joes-alkaline-water-fails-test-at-9-5-ph/).

1 69. Plaintiff could not have tested the Product when it was bottled because
2 the water is bottled on private property that is not open to the public or available to
3 Plaintiff unless through discovery.

4 70. Plaintiff has requested, but has not received, discovery responsive to the
5 inquiry as to whether the Product lacked the 9.5+ representation on a class-wide basis.

6 71. Based on reviews surveyed in the public domain, articles, and her own
7 personal testing, Plaintiff asserts upon information and belief, that Trader Joe's did not
8 meet this representation on a class-wide basis, at least during some periods.

9 72. Plaintiff is unable to conduct expert testing and prepare an expert report
10 on these contentions until she is granted access to the source of production, she
11 receives all test reports and results from the Defendants. Then Plaintiff's expert can
12 also test the degradation of alkaline water, which occurs over time, and after the water
13 is bottled. Degradation of pH ions is an accepted fact, such that the longer the Product
14 sits, the more pH will be lost.

15 73. The "9.5+" representation is implied to the consumer that such alkalinity
16 will last for a reasonable time through consumption, as there is no counter-inference
17 or designation on the bottle such as "good if used through [date]."

18 74. A reasonable consumer will believe that the Product will maintain its
19 alkalinity a reasonable time after it is sourced and manufactured through point of
20 purchase, and a reasonable amount of time thereafter for consumption.

21 75. Plaintiff relied on this representation when she purchased the Product. In
22 actuality, the representation was false.

23 **TRADER JOE'S ALKALINE WATER**

24 76. Articles and publications written by licensed Doctors and PhD's, have
25 concluded that pH water is affirmatively false because it is a medical impossibility.

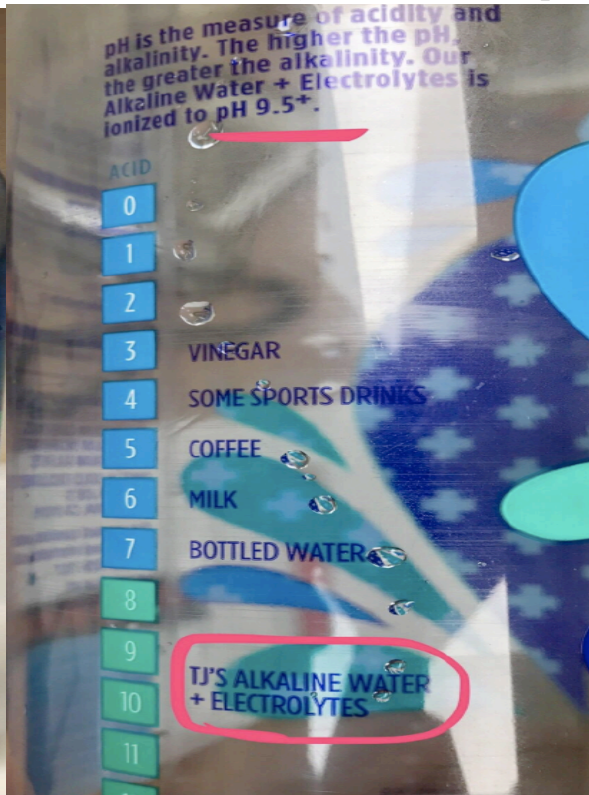
26 77. In the alternative, articles and publications suggest that Alkaline Water
27 provides no health benefit or hydration improvement.

78. Trader Joe's Product falsely and misleadingly represents: "Trader Joe's
 "Alkaline Water," "ionized to achieve the perfect balance." Next, Trader Joe's falsely
 claims "pH 9.5+" "pH is the measure of acidity and alkalinity. The higher the pH, the
 greater the alkalinity." Further "Our Alkaline Water + Electrolytes is ionized to pH
 9.5+." These particular statements were made on the packaging of the Product in
 Figure No. 1 and Figure No. 2.

FIGURE NO. 1



FIGURE NO. 2 (Reverse side of packaging)



79. In addition, there are hundreds of plus symbols on the packaging next to a statement "refresh and hydrate" connoting non-existent health benefits. On Trader Joe's website, and on its product catalogue mailed and disseminated to millions (including Plaintiff), Trader Joe's made the false and misleading claims: "The mineralized water is purified through reverse osmosis, then run through electric currents (electrolysis), which changes the structure of the water and raises the pH to

9.5+ (neutral pH of water is 7).” Moreover, in the same marketing materials, Trader Joe’s represented “[w]hether you’ve just eaten an abundance of corn or cranberries (foods high in acid); or you’ve been sweating profusely; and/or you’ve been reading this Flyer (because obviously that would make you thirsty) our Alkaline Water + Electrolytes is a drink that can satisfy.” See Fig. 3. At each Trader Joe’s store, Trader Joe’s stacks its alkaline water product adjacent to the non-alkaline water product to obtain a price premium based on the representations therein. See Fig. 4.

FIGURE NO. 3



FIGURE NO. 4.



80. The Defendants did not undertake any study before marketing their product and have not claimed to have done so. Thus, this is not a substantiation claim. Defendants do not have a single study to show that their water is “perfectly balanced” or will provide added hydration compared to other water, so this is not a substantiation claim. Defendants do not contend that the Product is clinically tested, so this is not a substantiation claim. In addition, Defendants’ product does not even maintain or have alkalinity represented on the packaging of 9.5+ when bottled or sold. The Product is more acidic than as represented.

81. Such deceptive conduct and practices mean that Defendants’ advertising and marketing is not just puffery, but is instead deceptive and is therefore, actionable.

82. Defendants take advantage of every marketing avenue the modern age has opened to them in order to ensure that the false and deceptive marketing message permeates the general consumer consciousness. Defendants use advertising, internet marketing, and social media, as well as glossy print through the “Fearless Flyer.” But no matter which marketing avenue reaches a consumer, Defendants’ drive home the

1 same false and deceptive claims of superior results from drinking alkaline branded
2 water through all the advertising mediums vis-à-vis normally sourced water.

3 83. However, even though there is no plausible metabolic explanation for a
4 claim that alkaline branded water provides any more benefit to a consumer than
5 typical water, or that they can hydrate, or that they can provide the “perfect balance,”
6 the Defendants persistently and pervasively market their product as one that “achieve
7 the perfect balance,” supposedly worthy of a premium price over other bottled water.
8 An ounce of Trader Joe’s alkaline water costs significantly more than an ounce of
9 Trader Joe’s Springwater, which is marketed adjacent to alkaline water at every
10 Trader Joe’s store in the Nation. *See Figure No. 4* above.

11 84. As a result of the foregoing, Defendants’ claims regarding Trader Joe’s
12 Alkaline water are deceptive and misleading. Had Plaintiff and other members of the
13 proposed Classes been aware of the truth about Trader Joe’s Alkaline Water, they
14 would not have purchased Trader Joe’s Alkaline Water, and would not have paid a
15 premium price for the Trader Joe’s Alkaline Water.

16 85. Indeed, Defendants were in a superior position to know and did know
17 that its claims and advertisements were deceptive and false and they failed to inform
18 consumers that their Trader Joe’s Alkaline branded water cannot perform as
19 advertised and promised.

20 86. Instead, Defendants allow their deceptive and misleading marketing to
21 permeate the consumer advertising consciousness and perpetuate Defendants’ false
22 claims and promises.

23 87. Defendants were also in a superior position to know about the alkalinity
24 of its water at the date of sourcing, distribution, purchase, and intended consumption.

25 88. Because of such deceptive practices and conduct, Defendants are able to
26 charge and get a substantial premium for their products over readily available and
27 much lower priced sources of water that provide the same or substantially the same

1 results. Thus, Defendants reap profits on products where consumers are induced to
2 pay an unwarranted, substantial premium.

3 89. All conditions precedent necessary for filing of this Complaint have been
4 satisfied and/or such conditions have been waived by the conduct of the Defendants.
5 Plaintiff has served a letter on the Defendants under Consumer Legal Rights Act prior
6 to commencing this action, which is attached to this FAC.

7 **CLASS ACTION ALLEGATIONS**

8 90. Plaintiff brings this action on behalf of herself and on behalf of a
9 Nationwide Class and California Subclass of other similarly situated persons pursuant
10 to Fed. R. Civ. Proc. 23(a), 23(b)(2), and/or 23(b)(3). Subject to additional
11 information obtained through further investigation and/or discovery, the foregoing
12 definition of the Classes may be expanded or narrowed. The proposed Classes are as
13 follows:

14 *UCL-Multistate Class:* All persons who, within the applicable
15 statute of limitations period, purchased Trader Joe Alkaline Water in
16 States with UCL or comparative consumer protection statutes, until the
date notice is disseminated.

17 *California Subclass:* All California persons who, within the applicable
18 statute of limitations period, purchased Trader Joe Alkaline Water until
19 the date notice is disseminated.

20 91. Excluded from the Classes are (1) Defendants, Defendants' subsidiaries,
21 affiliates, officers, directors, assigns and successors, and any entity which Defendants
22 have a controlling interest; (2) the Judge to whom this case is assigned and any
23 member of the Judge's immediate family; (3) anyone who purchased the Trader Joe's
24 Alkaline Water branded bottled water for the purpose of resale; (4) anyone asserting a
25 claim for personal injury. Plaintiff reserves the right to modify the Class and Subclass
26 definitions as further investigation and/or discovery so warrant.

27 92. This action has been brought and may be properly maintained as a class

1 action pursuant to Fed. R. Civ. Proc. 23 and case law thereunder.

2 93. **Numerosity:** The members of the Classes are so numerous that joinder of
 3 all members is impracticable. Plaintiff reasonably believes that the Classes are
 4 comprised of tens of thousands of consumers throughout the United States.

5 94. **Commonality:** Common questions of law and fact exist as to all
 6 members of the Classes. These common questions predominate over any questions
 7 affecting only individual Class members. These common legal and factual questions
 8 include, but are not limited to the following:

- 9 • whether Defendants' claims regarding Trader Joe's Alkaline Water
- 10 brand water are deceptive and misleading;
- 11 • whether Defendants engaged in false and misleading advertising;
- 12 • whether Defendants' conduct as alleged herein violates the
- 13 California Consumer Legal Remedies Act and California's unfair
- 14 competition law;
- 15 • whether Defendants' conduct as alleged herein constitutes a breach
- 16 of warranty;
- 17 • whether Defendants' conduct as alleged herein constitutes unjust
- 18 enrichment;
- 19 • whether Plaintiff and the class members have sustained monetary
- 20 loss and the proper measure of that loss; and
- 21 • whether Plaintiff and the Class members are entitled to declaratory
- 22 relief.

23 These and other questions of law and fact which are common to the members of
 24 the Class and predominate over any questions affecting only individual members of
 25 the Class.

26 95. **Typicality:** Plaintiff's claims are typical of the claims of the members of
 27 the Classes, as all Class members are similarly affected by Defendants' wrongful

1 conduct. Plaintiff, like other members of the Classes, purchased the Trader Joe's
2 Alkaline branded water after exposure to the same material misrepresentations and/or
3 omissions appearing on the product packaging and on or in Defendants' marketing
4 and advertising, and received a product that was not represented. Plaintiff is
5 advancing the same claims and legal theories on behalf of herself and all absent
6 members of the Classes.

7 96. **Adequacy:** Plaintiff's claims are made in a representative capacity on
8 behalf of the other members of the Class. Plaintiff has no interests antagonistic to the
9 interests of the other members of the proposed Class and is subject to no unique
10 defenses.

11 97. Plaintiff is similarly situated in interest to all members of the proposed
12 Class and is committed to vigorous prosecution of this action and has retained
13 competent counsel experienced in the prosecution of class actions. Accordingly,
14 Plaintiff is an adequate representative of the proposed Class and will fairly and
15 adequately protect the interests of the Class.

16 98. This suit may be maintained as a class action under Fed. R. Civ. Pro.
17 23(b)(2) because Defendants have acted, and/or refused to act, on grounds generally
18 applicable to the Classes, thereby making appropriate final injunctive relief.
19 Specifically, injunctive relief is necessary and appropriate to require Defendants to: (i)
20 discontinue advertising, marketing, packaging and otherwise representing Trader Joe's
21 Alkaline branded water; and (ii) to correct any erroneous impression consumers may
22 have derived concerning the nature, characteristic, or qualities of the Trader Joe's
23 Alkaline branded water, including without limitation, the placement of corrective
24 advertising and providing written notice to the public. Plaintiff

25 99. In addition, this suit may be maintained as a class action under Fed. R.
26 Civ. Pro. 23(b)(3) because a class action is superior to all other available methods for
27 the fair and efficient adjudication of this controversy since joinder of all members is

1 impracticable. The injury suffered by each individual class member is relatively small
 2 in comparison to the burden and expense of individual prosecution of the complex and
 3 extensive litigation necessitated by Defendants' conduct. It would be virtually
 4 impossible for members of the Classes individually to redress effectively the wrongs
 5 done to them. Even if the members of the Classes could afford such litigation, the
 6 court system could not. Individualized litigation presents a potential for inconsistent
 7 or contradictory judgments. Individually litigation increases the delay and expense to
 8 all parties, and to the court system, presented by the complex legal and factual issues
 9 of the case. By contrast, the class action device presents no management difficulties,
 10 and provides the benefits of single adjudication, economy of scale, and comprehensive
 11 supervision by a single Court.

12 **COUNT I**

13 **Breach of Express Warranty**

14 **(Asserted on Behalf of Nationwide Class and California Subclass against all**
 15 **Named Defendants and DOES 1-10)**

16 100. Plaintiff incorporates by reference all of the above paragraphs of this
 17 Complaint as though fully stated herein.

18 101. Plaintiff, and each member of the Class, formed a contract with
 19 Defendants at they time they purchased Defendants' Trader Joe's Alkaline Water
 20 bottled water. The terms of that contract include the promises and affirmations of fact
 21 made by Defendants on the labels of Defendants' alkaline water and through the
 22 advertising and marketing campaign, as alleged above. The Trader Joe's Alkaline
 23 branded water labeling and advertising constitute express warranties, are part of the
 24 basis of the bargain, and are part of a standardized contract between Plaintiff and the
 25 members of the Classes, on the one hand, and Defendants, on the other.

26 102. Alternatively, privity was established between Defendants and Plaintiff
 27 and Class Members because Defendants, and/or their agents, were substantially, if not

1 completely responsible for directly promoting and marketing Defendants' Trader
2 Joe's Alkaline branded water to Plaintiff and Class Members and Plaintiff and Class
3 Members were directly promoted to and marketed to by Defendants prior to
4 purchasing Defendants' Trader Joe's Alkaline branded water, resulting in the purchase
5 of Defendants' Trader Joe's Alkaline branded water by Plaintiff and the Class
6 members. By virtue of this direct promotion and marketing to Plaintiff and Class
7 Members, Defendants directly made an express warranty of the Trader Joe's Alkaline
8 Water brand water's attributes and benefits to Plaintiff and the Class Members.

9 103. All conditions precedent to Defendants' liability under the warranty have
10 been performed by Plaintiff and the Classes.

11 104. Defendants breached the terms of the express warranty by not providing
12 a product that provided the benefits promised. The statements made by Defendants
13 that warranted Defendants' claims of the Trader Joe's Alkaline Water having a
14 superior nature, attributes and benefits were not "puffery" or mere opinion – they were
15 statements affirmations of specific benefits and superior performance over alternative
16 and lower priced sources of water, allegedly based on scientific study.

17 105. Specifically, there is no metabolic explanation supporting the notion that
18 Trader Joe's water helps a consumer attain the "perfect balance," or "hydrate" and
19 "refresh." This is particularly illuminating in that Trader Joe's features this product
20 adjacent to its "ordinary" water product in stores nationwide, that includes no
21 statements about "hydrate" or "refresh." The warranties are false because the Product
22 does not "hydrate" but instead has a deleterious effect and health consequences on
23 those that consume it.

24 106. As pled above, Trader Joe's represents its water is "alkaline water," when
25 this is false in that water highly charged with electrolysis is not considered by
26 chemists to be "alkaline water." Thus, this representation is affirmatively false in the
27 alternative because the implication is that the water is alkaline water balanced by

1 electrolysis when this is false.

2 107. Next, Trader Joe's falsely claims "pH 9.5+" even though the actual pH at
3 the time of purchase and consumption was far less on the pH scale for Plaintiff.
4 Plaintiff has pled the particulars of her testing, and her review of the support for these
5 contentions in the factual section, which are incorporated herein.

6 108. The exact terms of the warranty are "ionized to achieve the perfect
7 balance," "pH +9.5," "alkaline water," "the higher the pH, the greater the alkalinity"

8 109. The exact off-label terms are taken from the fearless flyer – "whether
9 you've just eaten an abundance of corn or cranberries (foods high in acid), or you've
10 been sweating profusely, Alkaline Water + electrolytes is a drink that can satisfy."

11 110. Plaintiff and Class Members relied on these representations by
12 Defendants in purchasing Trader Joe's Alkaline branded water instead of less
13 expensive, but equally or more effective water.

14 111. Plaintiff's reliance was reasonable in that "satisfy" meant it would
15 counterbalance eating foods high in acid or would help with performance.

16 112. Plaintiff's reliance was reasonable in that "ionized to achieve the perfect
17 balance" cannot refer to the Product.

18 113. Plaintiff's reliance was reasonable in that "pH 9.5+" is a warranty that
19 the water will at a pH of 9.5 or greater when it is reasonably consumed within
20 consumer expectations."

21 114. Defendant breached the various warranties made in the on-label and off-
22 label representations by: (a) not providing a product of "pH of 9.5+", by (b) not
23 providing "alkaline water" as the ions were merely altered through electrolysis; (c) by
24 not achieving the perfect balance in that the Product is not any one specific pH; (d) by
25 not achieving the perfect balance in that it did not alter Plaintiff's internal pH balance;
26 (e) did not "satisfy" the counter effects of foods high in acids, (f) did not hydrate or
27 help hydrate based on profuse sweating.

1 115. The breaches of the warranty proximately caused Plaintiff's injury.

2 116. As a result of Defendants' breaches of warranty, Plaintiff and the Classes
3 have been damages and injured in the amount of the purchase price of Defendants'
4 Trader Joe's Alkaline branded water they purchased, and have suffered other damages
5 to be determined by proof at trial.

6 **COUNT II**

7 **Unjust Enrichment**

8 **(Asserted on Behalf of Nationwide Class and California Subclass against all**
9 **Named Defendants and DOES 1-10)**

10 117. Plaintiff incorporates by reference all of the above paragraphs of this

11 118. Complaint as though fully stated herein.

12 119. This claim is asserted in the alternative on behalf of Plaintiff and Class
13 members to the extent that any contracts do not govern the entirety of the subject
14 matter of the dispute with Defendants.

15 120. Plaintiff and Class members conferred a tangible economic benefit upon
16 Defendants by purchasing the Trader Joe's Alkaline branded water. Plaintiff and
17 Class members would have expected remuneration from Defendants at the time this
18 benefit was conferred had they know that the Trader Joe's Alkaline branded water did
19 not perform as promised.

20 121. As a direct and proximate result of Defendants' misconduct as set forth
21 above, Defendants have been unjustly enriched at the expense of Plaintiff and the
22 Class members.

23 122. It would be inequitable for Defendants to retain profits, benefits and other
24 compensation obtained by its wrongful conduct in marketing and selling of the Trader
25 Joe's Alkaline Water.

26 123. Plaintiff, on behalf of herself and Class members, seeks restitution from
27 Defendants, and an order of this Court disgorging all profits, benefits and other

1 compensation obtained by Defendants from their wrongful conduct.

2 **COUNT III**

3 **Violations of Consumer Legal Remedies Act and Various Consumer Protection** 4 **Acts of Other States** 5 **(Asserted on Behalf of Nationwide Class and California Subclass against all** 6 **Named Defendants and DOES 1-10)**

7 124. Plaintiff incorporates by reference all of the above paragraphs of this
 8 Complaint as though fully stated herein.

9 125. This is a claim for relief under the Consumer Legal Remedies Act, as
 10 well as the various Consumer Protection Acts of the jurisdiction in which Class
 11 Members are present and purchased Trader Joe's Alkaline Water, including but not
 12 limited to:

- 13 a. Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1, *et.*
 14 *seq.*;
- 15 b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak.
 16 Code § 45.50.471, *et. seq.*;
- 17 c. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et.*
 18 *seq.*;
- 19 d. Colorado Consumer Protection Act, Colo Rev. Stat § 6-1-101, *et.*
 20 *seq.*;
- 21 e. Connecticut Unfair Trade Practices Act, Conn. Gen Stat § 42-110a,
 22 *et. seq.*;
- 23 f. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et.*
 24 *seq.*;
- 25 g. District of Columbia Consumer Protection Procedures Act, D.C.
 26 Code §§ 28-3901, *et. seq.*;
- 27 h. Florida Deceptive and Unfair Trade Practices, Act *Florida Statutes*

- § 501.201, *et. seq.*;
- i. Georgia Fair Business Practices Act, §10-1-390 *et. seq.*;
- j. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 1, *et. seq.* and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statute § 481A-1, *et. seq.*;
- k. Idaho Consumer Protection Act, Idaho Code § 48-601, *et. seq.*;
- l. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et. seq.*;
- m. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et. seq.*;
- n. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et. seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann § 365.020, *et. seq.*;
- o. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. §§ 51:1401, *et. seq.*;
- p. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et. seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et. seq.*;
- q. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen Laws ch. 93A;
- r. Michigan Consumer Protection Act, §§ 445.901, *et. seq.*;
- s. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et. seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn Stat. § 325D.43, *et. seq.*;
- t. Mississippi Consumer Protection Act, Miss. Code An.. §§ 75-24-1, *et. seq.*;
- u. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010,

1 *et. seq.*;

2 v. Montana Unfair Trade Practices and Consumer Protection Act,
3 Mont. Code § 30-14-101, *et. seq.*;

4 w. Nebraska Consumer Protection Act, neb. Rev. Stat. § 59 1601 *et.*
5 *seq.*, and the Nebraska Uniform Deceptive Trade Practices Act,
6 Neb. Rev. Stat. § 87-301, *et. seq.*;

7 x. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§
8 598.0903, *et. seq.*;

9 y. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-
10 A:1, *et. seq.*;

11 z. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et.*
12 *seq.*;

13 aa. New Mexico Unfair Practices Act, N.M. Sta. Ann. §§ 57 12 1, *et.*
14 *seq.*;

15 bb. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law
16 §§ 349 and 350 *et. seq.*

17 cc. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01,
18 *et. seq.*;

19 dd. Ohio Rev. Code Ann. §§ 1345.02 and 1345.03; Ohio Admin. Code
20 §§ 109;

21 ee. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et. seq.*;

22 ff. Oregon Unfair Trade Practices Act, Ore. Rev. Stat. § 646.608(e) &
23 (g);

24 gg. Rhode Island Unfair Trade Practices and Consumer Protection Act,
25 R.I. Gen. Laws § 6-13.1-1 *et. seq.*;

26 hh. South Carolina Unfair Trade Practices Act, S.C. Code Law § 39-5-
27 10, *et. seq.*;

- 1 ii. South Dakota’s Deceptive Trade Practices and Consumer
- 2 Protection Law, S.D. Codified Laws §§ 37 24 1, *et. seq.*;
- 3 jj. Tennessee Consumer Protection ct, Tenn. Code Ann. § 47-18-101
- 4 *et. seq.*;
- 5 kk. Vermont Consumer Fraud Act, Vt. Stat. Ann. Tit. 9, § 2451, *et.*
- 6 *seq.*;
- 7 ll. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86/0101,
- 8 *et. seq.*;
- 9 mm. West Virginia Consumer Credit and Protection Act, West Virginia
- 10 Code § 46A-6-101, *et. seq.*;
- 11 nn. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18, *et.*
- 12 *seq.*

13 (“Consumer Protection Acts”).

14 126. The Defendants’ acts and omissions as well as their failure to use
 15 reasonable care in this matter as alleged in this FAC, including but no limited to, the
 16 knowing misrepresentation or failure to disclose the source, affiliation, origin,
 17 characteristics, ingredients, standards and quality of Trader Joe’s Alkaline Water
 18 constitute violation of the provision of the CLRA and the various Consumer
 19 Protection Acts.

20 127. The Defendants’ unconscionable, unfair, and deceptive acts and practices
 21 set forth in this Complaint are likely and reasonably foreseeable to mislead Plaintiff
 22 and members of the Class and Subclass acting reasonably in their reliance on
 23 defendant’s acts and practices, and to their detriment.

24 128. The Defendants engaged in the unconscionable, unfair, and deceptive
 25 acts or practices set forth in this Complaint in the conduct of trade or commerce.

26 129. The Defendants’ misrepresentations or omissions as set forth in this
 27 Complaint are material in that they relate to matters which are important to consumers

1 or are likely to affect the purchasing decisions or conduct of consumers, including
 2 Plaintiff and Class Members regarding Defendants' products.

3 130. The Defendants' business practice, in its advertising, marketing,
 4 packaging, labeling, and sales of its Trader Joe's Alkaline Water as unique and
 5 superior products justifying substantially higher prices over alternative sources of
 6 water, such as normal bottled water, is an unconscionable, unfair, and deceptive act or
 7 practice, in violation of the CLRA (and other Consumer Protection Acts), in that it (1)
 8 offends established public policy, (2) is immoral, unethical, oppressive, or
 9 unscrupulous, and/or (3) is substantially injurious and caused actual damages to
 10 consumers, including Plaintiff and Class Members who purchased Defendants' Trader
 11 Joe's Alkaline Water because of Defendants' representations and conduct.

12 131. Plaintiff and Class Members have suffered actual damages as a result of
 13 Defendants' violation of the CLRA and the various Consumer Protection Acts and are
 14 entitled to relief.

15 132. As a direct and proximate cause of Defendants' violations of the CLRA
 16 and the various Consumer Protection Acts, Plaintiff and Class Members have incurred
 17 harm and damages as described herein are entitled to recover for those damages,
 18 including but not limited to, actual damages, costs, attorneys' fees, and injunctive
 19 relief, pursuant to California law, and the various Consumer Protection Acts.

20 **COUNT IV**

21 (Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et. seq.*)

22 (Asserted on Behalf of Nationwide Class and California Subclass against all Named
 23 Defendants and DOES 1-10)

24
 25 133. Plaintiff realleges and incorporates the allegations elsewhere in the
 26 Complaint as if set forth in full herein.
 27

134. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code §17200.

135. The acts, omissions, misrepresentations, practices, and non-disclosures of Trader Joe’s as alleged herein constitute business acts and practices.

136. A statement or practice is fraudulent under the UCL if it is likely to deceive the public, applying a reasonable consumer test. As set forth herein, Trader Joe’s claims relating to The Alkaline Water Product is likely to deceive reasonable consumers and the public.

Unlawful

137. The acts alleged herein are “unlawful” under the UCL in that they violate at least the following laws:

- The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 et. seq.;
- The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et. seq.;
- The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et. seq., and specifically § 343(a) (prohibiting food labeling that is “false or misleading in any particular”); and
- The California Sherman Food, Drug, and Cosmetic Act, Cal. Health & Safety Code §§ 109875 et. seq.

Unfair

138. Trader Joe’s conduct with respect to the labeling, advertising, and sale of the Alkaline Water Product is unfair because Trader Joe’s conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

139. Trader Joe’s conduct with respect to the labeling, advertising, and sale of the Alkaline Water Products was also unfair because it violated public policy as declared by specific constitutional, statutory or regulatory provisions, including but not limited to the False Advertising Law.

1 140. Trader Joe's conduct with respect to the labeling, advertising, and sale of
2 the Alkaline Water Products was also unfair because the consumer injury was
3 substantial, not outweighed by benefits to consumers or competition, and not one
4 consumers themselves could reasonably have avoided.

5 141. Trader Joe's conduct was unfair and unreasonable in that it has known
6 that scientifically, the claims made are affirmatively false, and impossible to produce
7 the represented result both in pH number, and in represented benefits.

8 142. Trader Joe's profited from its sale of the falsely, deceptively, and
9 unlawfully advertised Alkaline Water Products to unwary consumers.

10 143. Plaintiff and Class Members are likely to be damaged by Trader Joe's
11 continued deceptive trade practices, as Trader Joe's continues to falsely advertise and
12 sell the Alkaline Water Products. Thus, injunctive relief enjoining this deceptive
13 practice is proper.

14 144. Trader Joe's conduct caused and continues to cause substantial injury to
15 plaintiff and the other Class Members, who have suffered injury in fact as a result of
16 Trader Joe's unlawful conduct.

17 145. In accordance with Bus. & Prof. Code § 17203, Plaintiff, on behalf of
18 herself, the Class, and the general public, seeks an order enjoining Trader Joe's from
19 continuing to conduct business through unlawful, unfair, and/or fraudulent acts and
20 practices, and to commence a corrective advertising campaign.

21 146. Plaintiff, on behalf of herself and the Class also seeks an order for
22 disgorgement and restitution of all monies from the sale of the Alkaline Water
23 Products, which were unjustly acquired through acts of unlawful competition.

24 ///

25 ///

26 ///

27 ///

COUNT V

(Violations of the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et. seq.*)
(Asserted on Behalf of Nationwide Class and California Subclass against all Named
Defendants and DOES 1-10)

147. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

148. Under the FAL, “[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services” to disseminate any statement “which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

149. As alleged herein, the advertisements, labeling, policies, acts, and practices of Trader Joe’s relating to the Product misled consumers acting reasonably as to whether the Product is “alkaline water,” whether it is “ionized to achieve the perfect balance,” whether it provided alkalinity of “9.5+,” whether the representation the higher the “pH the higher the alkalinity” was true even though the chemical make-up was changed based on electrolysis, not based on alkalinity, whether the scale was false in that Trader Joe’s bottled spring water is the same (or similar) alkalinity as Trader’s Joe’s Alkaline Water even though the “Alkaline water” is significantly more expensive.

150. Plaintiff suffered injury in fact as a result of Trader Joe’s actions as set forth herein because Plaintiff purchased the Product in reliance on Trader Joe’s false and misleading marketing claims that the Product was ionized to achieve the perfect balance, was a pH of 9.5+, etc.

151. Trader Joe’s business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to the FAL because Trader

1 Joe's has advertised the Product in a manner that is untrue and misleading, which
2 Trader Joe's knew or reasonably should have known.

3 152. Trader Joe's profited from its sales of the falsely and deceptively
4 advertised Alkaline Water Products to unwary consumers.

5 153. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff and the
6 Class are entitled to injunctive and equitable relief, restitution, and an order for the
7 disgorgement of the funds by which Trader Joe's was unjustly enriched.

8 **COUNT VI**

9 (Breach of Implied Warranty of Merchantability, Cal. Com. Code § 2314)

10 (Asserted on Behalf of Nationwide Class and California Subclass against all Named
11 Defendants and DOES 1-10)

12 154. Plaintiff realleges and incorporates the allegations elsewhere in the
13 Complaint as if set forth in full herein.

14 155. Trader Joe's, through its acts set forth herein, in the sale, marketing, and
15 promotion of the Alkaline Water Product, made representations to Plaintiff and the
16 Class that, among other things, the Product creates a "perfect balance" and has
17 alkalinity of 9+, and that one could "refresh and hydrate" with + symbols
18 superimposed on the Product's packaging.

19 156. As pled above, Trader Joe's represents its water is "alkaline water," when
20 this is false in that water highly charged with electrolysis is not considered in science
21 to be "alkaline water." Thus, this representation is affirmatively false in the
22 alternative in that the implication is that the water is balanced by electrolysis when
23 this is false.

24 157. Next, Trader Joe's falsely claims "pH 9.5+" even though the actual pH at
25 the time of purchase and consumption was far less on the pH scale for Plaintiff.
26 Plaintiff has pled the particulars of her testing, and her review of the support for these
27 contentions in the factual section, which are incorporated herein.

1 158. The exact terms of the warranty are “ionized to achieve the perfect
2 balance,” “pH +9.5,” “alkaline water,” “the higher the pH, the greater the alkalinity”

3 159. The exact off-label terms are taken from the fearless flyer – “whether
4 you’ve just eaten an abundance of corn or cranberries (foods high in acid), or you’ve
5 been sweating profusely, Alkaline Water + electrolytes is a drink that can satisfy.”

6 160. Plaintiff and Class Members relied on these representations by
7 Defendants in purchasing Trader Joe’s Alkaline branded water instead of less
8 expensive, but equally or more effective water.

9 161. Plaintiff’s reliance was reasonable in that “satisfy” meant it would
10 counterbalance eating foods high in acid or would help with performance.

11 162. Plaintiff’s reliance was reasonable in that “ionized to achieve the perfect
12 balance” cannot refer to the Product.

13 163. Plaintiff’s reliance was reasonable in that “pH 9.5+” is a warranty that
14 the water will at a pH of 9.5 or greater when it is reasonably consumed within
15 consumer expectations.”

16 164. Defendant breached the various warranties made in the on-label and off-
17 label representations by: (a) not providing a product of “pH of 9.5+”, by (b) not
18 providing “alkaline water” as the ions were merely altered through electrolysis; (c) by
19 not achieving the perfect balance in that the Product is not any one specific pH; (d) by
20 not achieving the perfect balance in that it did not alter Plaintiff’s internal pH balance;
21 (e) did not “satisfy” the counter effects of foods high in acids, (f) did not hydrate or
22 help hydrate based on profuse sweating.

23 165. The breaches of the warranty proximately caused Plaintiff’s injury.

24 166. Trader Joe’s is a merchant with respect to the goods of this kind which
25 were sold to Plaintiff and the Class, and there was, in the sale to Plaintiff and other
26 consumers, an implied warranty that those goods were merchantable.
27

1 167. However, Trader Joe's breached that implied warranty in that the does
 2 not create the perfect balance, and does not create any health benefit, as set forth in
 3 detail herein.

4 168. As an actual and proximate result of Trader Joe's conduct, Plaintiff and
 5 the Class did not receive goods as impliedly warranted by Trader Joe's to be
 6 merchantable in that they did not conform to promises and affirmations made on the
 7 container or label of the goods, in violation of Cal. Com. Code § 2314(2)(f).

8 169. Plaintiff notified Trader Joe's of the breach prior to filing, but Trader
 9 Joe's failed to rectify the breach.

10 170. As a result, plaintiff seeks, on behalf of herself and other Class Members,
 11 actual damages arising as a result of Trader Joe's breaches of implied warranty.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of herself and all members of the Classes
 14 defined herein, prays for judgment as follows:

- 15 a. Certification of the Class under Federal Rule of Civil Procedure 23 and
 16 appointment of Plaintiff as representative of the Classes and her counsel
 17 as Class counsel;
- 18 b. A temporary, preliminary and/or permanent order for injunctive relief
 19 requiring Defendants to: (i) discontinue advertising, marketing,
 20 packaging and otherwise representing Trader Joe's Alkaline branded
 21 water as having benefits that they do not have; (ii) undertake an
 22 immediate public information campaign to inform members of the
 23 proposed Classes as to the prior practices; and (iii) to correct any
 24 erroneous impression consumers may have derived concerning the
 25 nature, characteristics, or qualities of Trader Joe's Alkaline branded
 26 water, including without limitation, the placement of corrective
 27 advertising and providing written notice to the public;

- c. An order requiring imposition of a constructive trust and/or disgorgement of Defendants' ill-gotten gains and to pay restitution to Plaintiff and all members of the Classes and to restore to the Plaintiff and members of the Classes all funds acquired by means of any act or practice declared by this Court to be an unlawful, fraudulent or unfair business act or practice, a violation of laws, statute or regulations, or constituting unfair competition or false advertising;
- d. Distribution of any moneys recovered on behalf of members of the Classes via fluid recovery or *cy pres* recovery where necessary and as applicable, to prevent Defendants from retaining the benefits of their wrongful conduct;
- e. Compensatory and other damages for economic and non-economic damages identified herein, including all damages allowed by governing statutes;
- f. Statutory pre-judgment and post-judgment interest on any amounts;
- g. Reasonable attorneys' fees as may be allowable under applicable law;
- h. Costs of this suit; and
- i. Such other relief as the Court may deem just and proper.

Respectfully submitted,

Dated: December 11, 2018

By: /s/ Blake J. Lindemann

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Attorneys For Plaintiff
 DANA WEISS, AND ALL THOSE SIMILARLY
 SITUATED

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: December 11, 2018

By: /s/ Blake J. Lindemann

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PROOF OF SERVICE

I, the undersigned, declare: I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 433 N. Camden Drive, 4th Floor, Beverly Hills, CA 90210.

On December 11, 2018, I served the foregoing document as follows:

FIRST AMENDED COMPLAINT – CLASS ACTION

[X] by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such electronic filing to counsel of record for all parties by operation of the Court's CM/ECF System.

[] by U.S. Mail in the ordinary course of business to the non-CM/ECF participants indicated on the attached Manual Notice List. I am readily familiar with the Firm's practice for the collection and processing of correspondence for mailing with the Postal Service and that the correspondence would be deposited with same that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the above is true and correct. Executed on December 11, 2018, at Beverly Hills, California.

By: /s/ Nataly Grande
Nataly Grande